

## 37 Am. Jur. 2d Fraud and Deceit § 28

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### Fraud and Deceit

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### II. Elements and Requisites

#### A. Basis of Action

#### 2. Essential Elements of Action

## § 28. Misrepresentation—Intentional misrepresentation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Fraud](#)  1 to 7, 26

### A.L.R. Library

[Enforceability of Trial Period Plans \(TPP\) Under the Home Affordable Modification Program \(HAMP\)](#), 88 A.L.R. Fed. 2d 331

[Enforceability of Trial Period Plans \(TPP\) Under the Home Affordable Modification Program \(HAMP\)](#), 88 A.L.R. Fed. 2d 331

### Law Reviews and Other Periodicals

Arger and Natarelli, [Support for Dismissal of State Law Based HAMP TPP Cases](#), 2013-JAN Bus. L. Today 1 (2013)

Axelson and Hutchings, [Mortgage Servicing Developments](#), 68 Bus. Law. 571 (2013)

Chiles and Mitchell, [HAMP: An Overview of the Program and Recent Litigation Trends](#), 65 Consumer Fin. L.Q. Rep. 194 (2011)

Dyer, [Trial Period Plan Creates Mortgage Modification](#), 17 J. Consumer & Com. L. 31 (2013)

Hawes, [Forcing Lenders to Comply with the Home Affordable Modification Program](#), 101 Ill. B.J. 308 (2013)

Jacobs, [Help or HAMP\(Er\)?—The Courts' Reluctance to Provide the Right to a Private Action under HAMP and its Detrimental Effect on Homeowners](#), 47 Val. U. L. Rev. 267 (2012)

Maxwell, [The 75 Billion Dollar Question: Why is HAMP Not An Entitlement Program?](#), 97 Iowa L. Rev. 1305 (2012)

Parker, [Mending Broken Promises: Allowing Homeowners to Pursue Claims of Promissory Estoppel Against Lenders](#)

When Denied Loan Modifications, 47 New Eng. L. Rev. 985 (2013)  
Sarapinian, *Fighting Foreclosure: Using Contract Law to Enforce the Home Affordable Modification Program*, 64 Hastings L.J. 905 (2013)

At common law, fraudulent misrepresentation and intentional misrepresentation are the same tort.<sup>1</sup> There is also authority holding that a cause of action for intentional misrepresentation is essentially a claim of fraud.<sup>2</sup> To state a claim for intentional misrepresentation, the plaintiff must show that the defendant made a misrepresentation of a material fact with knowledge of its falsity or recklessness as to whether it is true or false, that the defendant made the representation with intent to defraud and to induce the plaintiff to act upon it, the plaintiff believed the statement to be true and relied on it to his or her detriment, and the resulting injury was proximately caused by the reliance.<sup>3</sup> The elements of a claim for intentional misrepresentation are an intentional falsity that is material, intended by the defendant to cause reliance, and that does cause detrimental reliance;<sup>4</sup> the tort of intentional misrepresentation must be proved by showing that the representation was made with knowledge of its falsity or with conscious indifference to its truth and with the intention of causing another person to rely on the representation.<sup>5</sup> Also, intentional misrepresentation requires proof of bad faith to the extent of knowingly making a false representation intended to induce reliance by another party.<sup>6</sup>

**Observation:**

Intentional and negligent misrepresentations are both actionable forms of fraud.<sup>7</sup> Liability for intentional or negligent misrepresentations that threaten physical harm is grounded upon a duty that is coextensive with foreseeable risk, whereas in the separate and distinct sphere of misrepresentation involving risk of pecuniary loss, the representor's duty is much reduced.<sup>8</sup> Claims for intentional and negligent misrepresentation require proof of a material, false representation, and detrimental reliance.<sup>9</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

To prevail upon intentional misrepresentation claim under Maryland common law, plaintiff must establish by clear and convincing evidence that: (1) defendant made false representation to plaintiff; (2) falsity was either known to defendant or representation was made with reckless indifference as to its truth; (3) misrepresentation was made for purpose of defrauding plaintiff; (4) plaintiff relied on misrepresentation and had right to rely on it; and (5) plaintiff suffered compensable injury resulting from misrepresentation. *Mayor and City Council of Baltimore v. Unisys Corp.*, 59 F. Supp. 3d 729 (D. Md. 2014), reconsideration denied in part, 2014 WL 6950187 (D. Md. 2014).

### [END OF SUPPLEMENT]

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### Footnotes

<sup>1</sup> *Kramer v. Petisi*, 285 Conn. 674, 940 A.2d 800 (2008).

- <sup>2</sup> Reid v. Landsberger, 123 Conn. App. 260, 1 A.3d 1149 (2010), appeal denied, 298 Conn. 933, 10 A.3d 517 (2010) and appeal denied, 298 Conn. 933, 10 A.3d 517 (2010); Barrand, Inc. v. Whataburger, Inc., 214 S.W.3d 122 (Tex. App. Corpus Christi 2006).
- <sup>3</sup> Wooding v. U.S., 374 Fed. Appx. 309 (3d Cir. 2010) (applying Pennsylvania law); Kadlec Medical Center v. Lakeview Anesthesia Associates, 527 F.3d 412 (5th Cir. 2008) (applying Louisiana law); Felland v. Clifton, 682 F.3d 665 (7th Cir. 2012) (applying Wisconsin law); Boyd v. Tornier, Inc., 656 F.3d 487 (7th Cir. 2011) (applying both Missouri and Iowa law); Williamson v. Hi-Liter Graphics, LLC, 2012 WI App 37, 340 Wis. 2d 485, 811 N.W.2d 866 (Ct. App. 2012); Excel Const., Inc. v. HKM Engineering, Inc., 2010 WY 34, 228 P.3d 40 (Wyo. 2010).
- <sup>4</sup> CNH America LLC v. International Union, United Auto., Aerospace and Agr. Implement Workers of America (UAW), 645 F.3d 785 (6th Cir. 2011) (applying Wisconsin law).
- <sup>5</sup> Tessier v. Rockefeller, 162 N.H. 324, 33 A.3d 1118 (2011).
- <sup>6</sup> Excel Const., Inc. v. HKM Engineering, Inc., 2010 WY 34, 228 P.3d 40 (Wyo. 2010).
- <sup>7</sup> Conte v. Wyeth, Inc., 168 Cal. App. 4th 89, 85 Cal. Rptr. 3d 299 (1st Dist. 2008).
- <sup>8</sup> Brown v. Neff, 159 Misc. 2d 186, 603 N.Y.S.2d 707 (Sup 1993).
- <sup>9</sup> CNH America LLC v. International Union, United Auto., Aerospace and Agr. Implement Workers of America (UAW), 645 F.3d 785 (6th Cir. 2011).

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